Supreme Court, U.S.
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No. 89-350

In The

Supreme Court of the United States

October Term, 1989

LANTANA CASCADE OF PALM BEACH, LTD., A FLORIDA LIMITED PARTNERSHIP, BY AND THROUGH JAMES A. SMITH AS ONE OF ITS GENERAL PARTNERS,

Petitioner,

v.

LANCA HOMEOWNERS, INC., A FLORIDA CORPORATION NOT FOR PROFIT,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA INCLUDING APPENDIX THERETO

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QUESTIONS PRESENTED (RESTATED)

Question No. 1. Whether the minimum standards for due process of law are violated by a state court rule of civil procedure which permits a mobile homeowners' association to bring class action suits on behalf of all homeowners whose mobile homes are placed on rented lots in a mobile home park, concerning matters of common interest within the park.

Question No. 2. Whether the minimum standards for due process of law are violated by a state court rule of civil procedure promulgated to take effect immediately.

LIST OF PARENT COMPANIES, SUBSIDIARIES, AND AFFILIATES OF RESPONDENT CORPORATION

Respondent in this proceeding is Lanca Homeowners, Inc., a Florida not-for-profit corporation (hereinafter "Respondent"), created in accordance with the Florida Mobile Home Act, Section 723.075, Fla. Stat. (1985) as a "mobile homeowners association", requiring written approval for its creation and operation by a minimum of two-thirds (2/3) of all of the four-hundred sixty-one (461) mobile home owners in the mobile home park. Respondent corporation has no subsidiaries or parent companies or affiliates.

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JURISDICTIONAL STATEMENT

This Court has no certiorari jurisdiction over the first Question Presented because the federal issue therein asserted was not properly and timely raised in the state courts. Petitioner made its first reference to the due process clause of the Federal Constitution in its motion for rehearing to the Florida Supreme Court, and can not reasonably claim that the motion for rehearing constituted the first opportunity to raise that issue. In denying Petitioner's motion for rehearing, the Florida Supreme Court did not address the federal issue.

This Court has no certiorari jurisdiction over the second Question Presented because:

(1) The federal issue therein asserted was not raised at all in the state courts, and was no where addressed by the state courts.

(2) The question is an hypothetical one which contains an element which is contrary to actual fact.

Finally, this Court lacks certiorari jurisdiction over both Questions Presented because there exist independent adequate nonfederal grounds for the decision of the Supreme Court of Florida.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article V, Section 2. (a) of the Florida Constitution states:

> SECTION 2. Administration, practice and procedure. –
>
> (a) The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the

> administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no cause shall be dismissed because an improper remedy has been sought. These rules may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.

Article I, Section 9. of the Florida Constitution states:

> Due Process. – No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against himself.

Chapter 723, Fla. Stat.

Section 723.033, Fla. Stat.

Section 723.037(1), Fla. Stat.

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Section 723.077, Fla. Stat.

Section 723.078, Fla. Stat.

Section 723.079, Fla. Stat.

Section 723.081, Fla. Stat.

COUNTERSTATEMENT OF THE CASE

Respondent adopts the facts of the case as stated by the Supreme Court of Florida.

Petitioner owns Lantana Cascade Mobile Home Park located in Florida (the park), which offers for rent 461 mobile home lots. L. C. Grievance Committee (L.C.) is a Florida not-for-profit corporation that was organized in 1975 to represent the interests of mobile home owners in the park. Respondent, Lanca Homeowners, Inc., is a Florida not-for-profit corporation that was organized in 1985 as "the homeowners association", pursuant to § 723.075, Fla. Stat. (1985). Three-hundred and forty-four mobile home owners within the park consented in writing to joining Respondent corporation. In 1986, Respondent and L.C. wrote a letter to Petitioner charging it with engaging in unfair practices and threatening to withhold future rental payments. Petitioner filed suit against Respondent and L.C. seeking a declaratory judgment as to whether Respondent or L.C. were authorized to be the representatives of the home owners in the park in matters relating to Chapter 723, Fla. Stat., the "Mobile Home Act". Respondent and L.C., acting as representatives of their membership, filed a class action counterclaim. 541 So.2d at 1122.

After an evidentiary hearing, the trial court issued an order finding that Respondent, although not a member of the subject class, was an appropriate class representative under § 723.079(1), Fla. Stat. (1985), which provided in part:

> The association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all home owners concerning matters of common interest, including, but not limited to: the common property; structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving the park property; and protests of ad valorem taxes on commonly used facilities. If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action.

The trial court also found that the counterclaim met the requirements of Florida Rule of Civil Procedure 1.220 and was thus maintainable as a class action. Petitioner appealed the trial court's Order to the Fourth District Court of Appeal of the State of Florida. Id. at 1122.

The District Court reversed in part, affirmed in part. It held that although the counterclaim itself was suitable for presentation as a class action, Respondent lacked standing to assert it for two reasons. First, it held that § 723.079(1) is unconstitutional and cannot be used as a basis for finding Respondent a proper class representative. It based this holding on *Avila South Condominium Association v. Kappa Corp.*, 347 So.2d 599 (Fla. 1977), in which the Florida Supreme Court had ruled that the 1975 and 1976 versions of a statute similar to § 723.079(1), Fla.

Stat., governing condominium associations were an unconstitutional legislative incursion into the Florida Supreme Court's exclusive authority to promulgate rules governing procedure.[1] Second, the District Court found that because Respondent was not a member of the class, it failed to meet the requirements of Florida Rule of Civil Procedure 1.220(a), and thus lacked standing to represent the class under the rule. Id. at 1122-23.

Respondent appealed to the Florida Supreme Court the finding that it was an improper class representative, and Petitioner cross-appealed the finding that the counterclaim was maintainable as a class action. Respondent raised three issues on appeal: whether § 723.079(1) is constitutional; whether the statute should be adopted as a rule; and whether Respondent can act as class representative. On cross-appeal, Petitioner raised a single issue: whether the counterclaim itself was maintainable as a class action. Id. at 1123.

Petitioner challenged Respondent's request for adoption of a rule of procedure identical to § 723.079(1), Fla. Stat., primarily on the ground that the Florida Rules of Judicial Administration provide for the promulgation of new, immediately effective, rules only in emergencies, and argued that there had been no evidence of any such emergency. Petitioner's brief at 22.

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[1] In *Avila*, the Florida Supreme Court recognized, however, that the statute had merit and thus adopted a slightly modified version of the text of the 1976 statute as an emergency rule of procedure. Id. at 1122-23.

The Florida Supreme Court, adhering to its rationale in *Avila*, held that § 723.079(1), Fla. Stat., was clearly unconstitutional because that statute, by purporting to define the proper parties to suits litigating substantive rights, addressed matters of procedure which were within the Florida Supreme Court's exclusive domain pursuant to Article V, § 2(a), Florida Constitution. 541 So.2d at 1123.

As to Respondent's request that the Florida Supreme Court adopt the substance of § 723.079(1), Fla. Stat., as a new rule of Florida Civil Procedure, the Florida Supreme Court again followed its reasoning in *Avila*. Just as the Florida Supreme Court had found in *Avila*, that the peculiar features of condominium development, ownership, and operation indicated the wisdom of providing a procedural vehicle for settlement of disputes affecting condominium unit owners concerning matters of common interest; so that Court in the present action similarly noted that the unique features of mobile home park residency called for an effective procedural format for resolving disputes between park owners and home owners concerning matters of shared interest. Thus, just as it had done in *Avila*, the Florida Supreme Court recognized the usefulness of the policy sought to be asserted by the Florida Legislature in enacting § 723.079(1), Fla. Stat., and accordingly adopted the substance of that statute as a new Florida Rule of Civil Procedure, Rule 1.222, to be effective immediately. Id. at 1123-24.

The Florida Supreme Court then answered Respondent's third point on appeal – whether it could act as a class representative – in the affirmative, and stated that under the newly adopted rule, Respondent had the

authority to represent all the home owners in the park in a class action. Id. at 1124.

Petitioner filed a petition for rehearing to the Florida Supreme Court and raised for the first time (Petitioner's brief at 9, 20, 26, App. 25) its claims that:

> Due process of law requires at a minimum that an absent Plaintiff be provided with an opportunity to remove himself from a class action by executing and returning an "opt out" or "request for exclusion" form to the Court. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 105 S. Ct. 2965, 86 L. Ed. [sic] 628 (1985) . . .
>
> The due process clause of the United States Constitution requires that the named Plaintiff in a class action at all times adequately represent the interests of the absent class members. *Phillips Petroleum Co. v. Shutts, supra; Hansberry v. Lee*, 311 U.S. 32, 61 S. Ct. 115, 85 L. Ed. 22 (1940) . . .

Petitioner also asserted, for the first time, in its motion for rehearing, that by making the new rule of civil procedure immediately effective, the alleged substantive right of Petitioner to a Judgment in its favor on its initial action for declaratory judgment, together with an award of attorney's fees and costs, had been taken away by the Florida Supreme Court and that Petitioner had thus been denied a substantive right without "due process of law". Petitioner's brief, App. 26.[2]

By Order dated April 25, 1989, the Supreme Court of Florida denied Petitioner's motion for rehearing, without

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[2] Petitioner gave no hint as to whether it was referring to the due process clause of Art. I, § 9, Florida Constitution, and rights thereunder, or to the Federal Constitution.

addressing the "due process" arguments made by Petitioner. Petitioner's brief, App. 17.

REASONS WHY THE PETITION SHOULD BE DENIED

A. JURISDICTIONAL REASONS

1. This Court has no certiorari jurisdiction over the first Question Presented because the federal issue asserted therein was not properly and timely raised in the state court, and the state court did not consider or resolve the federal issue. *Exxon Corp. v. Eagerton*, 462 U.S. 176, 181 at n. 3 (1983).

In its motion for rehearing to the Supreme Court of Florida, Petitioner suggested for the first time that "due process of law" requires that an absent Plaintiff be provided with "opt out" or "request for exclusion" forms, and that the due process clause of the United States Constitution requires that the named Plaintiff in a class action at all times adequately represent the absent class members. Petitioner's brief, App. 25.

Petitioner admits that the "due process" argument was first raised in its motion for rehearing to the Florida Supreme Court. Petitioner states on page 26 of its brief:

> . . . The issues raised in the motion for rehearing were raised at the very first opportunity at which they could be raised . . .

Respondent strenuously disputes Petitioner's assertion that the motion for rehearing constituted the first opportunity for raising the federal issue. Petitioner's brief states at page 22:

> The rule did not exist before the court's decision of September 22, 1988. However, Respondent had, in the text of its brief to the Supreme Court of Florida requested as alternative relief the promulgation of a rule identical to the statute which had been declared unconstitutional.

Thus, during the brief writing stage of the appeal to the Florida Supreme Court, Petitioner was clearly on notice that Respondent was asking that Court to replace the statute which the District Court had declared unconstitutional with an identical rule of procedure. Furthermore, in view of the Florida Supreme Court's 1977 decision in *Avila*, it was apparent that the Florida Supreme Court was *likely* to replace the unconstitutional statute with a similar or virtually identical, and immediately effective, rule of procedure. Thus, Petitioner should have raised its federal constitutional challenge no later than in its answer brief filed with the Supreme Court of Florida.

Petitioner concedes that it did not raise the federal issue in its answer brief, but instead attacked Respondent's request for promulgation of the new rule on different grounds. Petitioner states on page 22 of its brief:

> This request [for the promulgation of a rule identical to the statute which had been declared unconstitutional] was challenged primarily on the ground that the Florida Rules of Judicial Administration provide for the promulgation of new or modified rules to become effective immediately only in emergencies . . . while there had been no evidence of the existence of any such emergency either at the trial court level or at the Supreme Court of Florida [footnote omitted].

This Court has held that raising a federal issue for the first time in a petition for rehearing addressed to the highest state court is insufficient to confer certiorari jurisdiction on this Court unless the state court actually entertains the petition and expressly decides the question. *Radio Station WOW v. Johnson*, 326 U.S. 120, 128 (1945); *Hanson v. Denckla*, 357 U.S. 235, 243-44 (1958). The Florida Supreme Court did not entertain Petitioner's motion for rehearing and did not decide the federal issue therein raised.[3]

Petitioner cannot reasonably claim that it was "surprised" by the Florida Supreme Court's granting of Respondent's request for promulgation of the new rule of procedure, so as to justify its failure to raise the federal issue before the Florida Supreme Court rendered its decision. Clear precedent for the Florida Supreme Court's action in the case at bar had been established by that Court in its often cited 1977 decision in *Avila* wherein it, after declaring unconstitutional a Florida statute which purported to confer class action status on condominium associations, replaced that statute with a virtually identical, immediately effective, emergency rule of procedure. Thus, the exception articulated in *Great Northern Railway Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358, 366-67

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[3] The regularly followed practice of the Florida appellate courts is to refuse to consider issues raised for the first time in a motion for rehearing. See, e.g., *Polyglycoat Corp. v. Hirsch Distributors, Inc.*, 442 So.2d 958 (Fla. 4th DCA 1983), pet. rev. dism. 451 So.2d 848 (Fla. 1984); *Sag Harbour Marine, Inc., V. Fickett*, 484 So.2d 1250 (Fla. lst DCA 1985), rev. den. 494 So.2d 1150 (Fla. 1986).

(1932), does not apply to excuse Petitioner's tardy raising of the federal issue.

2. This Court has no certiorari jurisdiction over the second Question Presented because Petitioner did not at any time raise in the state courts the federal issue now asserted and the state courts never addressed or resolved the federal issue. *Cardinale v. Louisiana*, 394 U.S. 437, 438-39 (1969).

In its motion for rehearing to the Florida Supreme Court, Petitioner did assert that by making the new rule of civil procedure immediately effective, the alleged substantive right of Petitioner for entry of a judgment in its favor on its declaratory judgment action, together with an award of attorney's fees and costs, had been taken away without "due process" of law. Petitioner's brief, App. 26. However, Petitioner did not disclose whether it was referring to the "due process" clause of the Florida Constitution, Art. I, Section 9, or to the federal Constitution. This Court has held that if a state Constitution has a "due process" clause, a claim, making no reference to the federal Constitution, that "due process" has been violated will be deemed to relate to the state Constitution and not the federal Constitution. *Bowe v. Scott*, 233 U.S. 658, 664-65 (1914).

3. This Court also has no certiorari jurisdiction over the second Question Presented because the second Question is an hypothetical question seeking an advisory opinion.

In Question No. 2, Petitioner asks whether the due process rights of a party to a lawsuit are violated when,

in the course of an appeal in that lawsuit, a new, immediately effective rule of civil procedure is promulgated, and where, as a result of the rule's taking immediate effect, the party is deprived of an alleged right to collect attorney's fees and costs

> "for having prevailed in an action based upon the rules as they had previously existed . . . "

Neither the orders or decisions of the state courts below nor the record raise the question presented in Question No. 2.

Petitioner most certainly did *not* "prevail" on either the declaratory judgment action which it filed or on the counterclaim asserted against it by Respondent and by L.C. Petitioner's brief, at App. 62-66, contains an excerpt from Petitioner's initial complaint which shows that Petitioner's action was one seeking a declaratory judgment as to whether Respondent or L.C. were authorized to be the representatives of the home owners within the park in matters relating to Chapter 723, Fla. Stat.

Petitioner's brief also contains at App. 56-61 excerpts from Respondent's and L.C.'s countercomplaint wherein they assert their right to bring suit in their representative capacity as representatives of their membership and of the class of mobile home owners in the park.

After an evidentiary hearing, the trial court entered its order certifying Respondent as an appropriate class representative to maintain the counterclaim. Petitioner's brief, App. 12-15. Although no final judgment was entered by the trial court, the trial court thus implicitly answered against Petitioner the question posed by it in its complaint for declaratory judgment; and it was that order

of the trial court certifying Respondent as class representative which Petitioner appealed to the District Court.

It simply can not be correctly asserted that Petitioner "prevailed" in the action. Since the gist of Question No. 2 is whether Petitioner's due process rights were violated by a new rule of procedure which divested Petitioner, as "prevailing party", of its alleged right to collect attorney's fees and costs; the question is an hypothetical one which contains an element totally contrary to actual fact. Thus, if this Court were to answer Question No. 2, this Court would be rendering an impermissible advisory opinion.

4. Finally, this Court has no jurisdiction to review the decision of the Supreme Court of Florida because that decision rests on independent and adequate state grounds.

That the decision rests on such state grounds is clear from a fair reading of the decision itself. The decision declares that a Florida Statute violated Art. V, § 2(a) of the Florida Constitution, because the statute impinged upon the Florida Supreme Court's exclusive domain in matters of procedure. However, because the Florida Supreme Court recognized the usefulness of the policy sought to be asserted by the Florida legislature in enacting the statute, the Supreme Court, pursuant to a Florida Rule of Judicial Administration, adopted a new emergency Rule of Florida Civil Procedure, which is virtually identical to the unconstitutional statute. In its decision the Supreme Court adhered to its own earlier 1977 decision in *Avila* wherein it had also declared violative of the Florida Constitution a similar Florida Statute, which also

had purported to affect procedural matters in the context of class actions by condominium associations, but adopted the rejected statute as an emergency rule of procedure. Each and every one of the constitutional sections, rules, statutes and cases cited in the Florida Supreme Court's decision are from Florida's Constitution, Florida's Rules, Florida's Statutes, and Florida's Courts. These provisions of Florida law on which the Supreme Court of Florida's decision is based are eminently sufficient to support its decision.

B. THE DECISION BELOW IS CORRECT

5. The decision below is not in conflict with decisions of this Court.

Petitioner argues in its brief (p. 24-25) that the decision below conflicts with *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985) and *Hansberry v. Lee*, 311 U.S. 32 (1940).

Respondent disputes Petitioner's allegations of conflict. *Phillips Petroleum* involved a group of individual royalty owners who filed suit against an oil company in a Kansas court and who sought certification of the suit as a class action on behalf of all affected royalty owners who resided in every state and several foreign countries and who possessed rights to oil leases in several states. In reviewing *Phillips Petroleum*, this Court held that due process required that an absent plaintiff be provided with an opportunity to remove himself from the class and further that the named plaintiff at all times represent the interests of the absent class members. 472 U.S. at 812.

The facts of mobile home park living in Florida are totally different from the facts in *Phillips Petroleum*. The peculiar features of mobile home park living, and the unique relationship between mobile home owners and park owners, require that a procedural vehicle be established for settlement of disputes affecting matters of common interest.

The Florida Legislature, by its enactment of Chapter 723, Fla. Stat., and the Florida Supreme Court in its landmark decision in *Stewart v. Green*, 300 So.2d 889 (Fla. 1974), acknowledged that a "hybrid" type of property relationship exists between mobile home owners and park owners and that the relationship is not simply one of landlord and tenant. This unique relationship, in large part, stems from the grossly unequal bargaining position of a mobile home owner once he "cements" his home into a mobile home park. Once a home is placed in a park it has a permanence of location. Its wheels and hitch are removed, it is placed on a concrete base, tied down in accordance with law, and joined with utility connections. Generally, once a home is located in a park, permanent attachments are added such as a garage, porch, shed or additional rooms. These permanent structures often are lost if the home is moved. In addition, it is both expensive and difficult to move a home. This situation is further aggravated by the existence of "closed parks" which refuse to allow older homes into their park and require the prospective tenant to purchase a new home or exact a high entrance fee for the privilege of bringing the older home into the park. The reality, therefore, is that it is not economically feasible for mobile home owners to move

their homes since if they are forced to do so, they will lose virtually their entire investment.

It is clear that once a mobile home is "cemented" in place, the home owner is at the mercy of the park owner. Under these adverse conditions, and in recognition of the home owners' unequal position, the Florida Legislature has sought to protect mobile home owners in such areas as: restriction of grounds for eviction (§ 723.061, Fla. Stat.); protection of a home owner's right to sell his home in the park (§ 723.058, Fla. Stat.); protection from undisclosed assessments and costs (§ 723.041(1)(b), Fla. Stat.); protection from unconscionable rents (§ 723.033, Fla. Stat.); and protection from lot rental increases, reduction in services and changes in rules and regulations (§ 723.037(1), Fla. Stat.). Despite these protections, the abuses by park owners and the oppressive treatment of home owners continues. The only recourse for the economically enslaved home owner faced with abuses by the park owner is to move his home out of the park, attempt to sell it, or challenge the park owner's actions in a lawsuit.

Even if the elderly mobile home owners who live on limited incomes could afford to relocate, there is no place to go because of the shortage of lots in other parks or because other parks are "closed parks" which refuse to admit used mobile homes. Similarly, the option of selling their homes is not feasible because they stand to lose all or a substantial amount of the investment in their homes. This is so because the most frequent abuse by park owners is in charging unreasonable and unconscionable rent and it has been established in Florida that as the rents increase in a mobile home park, the value of the

individual mobile home decreases. See e.g., *Offner v. Keller Park Investors,* 19 Fla. Supp. 2d 140 (Fla. 6th Cir. Ct. Pasco Co. 1986). Thus, the only viable alternative for the home owner is to challenge the actions of the park owner in a lawsuit. The most difficult question presented is how can the individual home owner afford the expenses and costs of litigating his claims against the park owner.

Rule 1.222 promulgated by the Florida Supreme Court provides the procedural vehicle for the individual home owner to economically resolve his disputes with the park owner and in addition, saves a multiplicity of suits, reduces the expense of litigation and makes the legal process more effective and expeditious. As Mr. Justice Douglas opined in *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 186 (1974):

> The class action is one of the few legal remedies the small claimant has against those who command the status quo. I would strengthen his hand with the view of creating a system of law that dispenses justice to the lowly as well as to those liberally endowed with power and wealth.

That philosophy is at the very heart of the case at bar.

The Florida Legislature, in enacting § 723.079, Fla. Stat., declared mobile home owners to be a class insofar as their common interests are concerned and provided the homeowners' association with the capacity to sue on behalf of the class. The cooperative nature of mobile home park living, to-wit; each home owner rents his lot from the park owner, is governed by the park owner's rules and regulations, and suffers or enjoys the quality of the park owner's maintenance of the common areas. The homes in the park are in close proximity, and the home

owners have the use of common roads, a clubhouse, recreational facilities and laundry facilities. This shows that the home owners' interests are coextensive with regard to the common elements of the park. Thus, in response to unlawful or improper actions of the park owner concerning these common interests, the home owners' goals in obtaining relief are identical. The wisdom of establishing the right of an incorporated homeowners association, as a matter of law, to represent the class of home owners concerning matters of common interest is clear. The public policies and considerations which led the Florida Supreme Court to adopt the emergency rule of civil procedure for condominium associations in *Avila*, are even more compelling when considering the peculiar features of mobile home park living and the unequal bargaining position that exists between home owners and park owners.

Thus, it is clear that the elements required to establish the efficacy of a "class" under Florida Rule of Civil Procedure 1.220 are *inherent* in a mobile homeowners' association making pleading and proof of such elements unnecessary and unduly burdensome. Further, the Florida Legislature, in Chapter 723, Fla. Stat., has validly created the capacity of a mobile homeowners' association to maintain suits and otherwise represent the class of home owners concerning matters of common interest. See e.g.: § 723.037(1), Fla. Stat.; § 723.037(3), Fla. Stat.; § 723.054, Fla. Stat.; § 723.055, Fla. Stat.; § 723.071, Fla. Stat.; § 723.073, Fla. Stat.; § 723.075(1), Fla. Stat.; § 723.076, Fla. Stat.; § 723.077, Fla. Stat.; § 723.078, Fla. Stat.; § 723.079, Fla. Stat.; § 723.081, Fla. Stat.

The intent of the Florida Legislature in the "Mobile Home Act" is clearly and precisely stated in § 723.075(1), Fla. Stat., to-wit: "[U]pon incorporation and service of the notice described in s. 723.076, the association *shall become the representative of the mobile home owners in all matters relating to this chapter.*" (emphasis supplied).

The facts in *Phillips Petroleum* are therefore significantly different from the facts of mobile home park residency.

The decision of the Florida Supreme Court does not conflict with *Hansberry*. *Hansberry* stands for the proposition that the Fourteenth Amendment to the federal Constitution does not compel state courts or legislatures to adopt any particular rules thought by this Court to be appropriate for class actions. Recognizing that divergent local institutions and interests should be regarded, this Court stated, at 311 U.S. 42:

> . . . there has been a failure of due process only in those cases where it cannot be said that the procedure adopted, fairly insures the protection of the interest of absent parties who are to be bound by it . . .

The decision of the Florida Supreme Court clearly satisfies the standard set forth in *Hansberry*.

6. Respondent is qualified to represent the home owners in the park.

Petitioner argues in its brief (p. 27) that Respondent corporation was not properly formed and that Respondent is thus not qualified to represent the home owners.

That issue was not preserved for review by this Court. While the record would show that Petitioner

raised this issue in its brief to the State District Court of Appeal, the decision of that Court is silent on the issue. Likewise, the decision of the Florida Supreme Court is silent on the issue.[4]

7. The decision below affects only mobile home parks in Florida.

Petitioner argues in its brief (p. 28-30) that it is in the national interest for this Court to discuss the constitutional parameters of class action litigation by associations for residential communities, and asserts that in doing so, this Court should require application of the formalities set forth in *Phillips Petroleum*, and appears to suggest that this Court should limit the remedies obtainable by homeowners' associations to injunctive, declaratory, or other prospective relief.

Although the issue is not contained in or inferable from the Questions Presented, Petitioner objects on page 29 of its brief to the Florida Supreme Court's holding that unconscionable rent actions on behalf of mobile home owners within an individual park, against the owner of that park, may be brought in a class action format. This issue has been extensively litigated in the Florida courts. (See 541 So.2d at 1124 and cases cited therein.) The Florida Supreme Court in the case at bar resolved the issue,

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[4] Most of the alleged "facts" on which Petitioner relies in support of its argument on this point are from Petitioner's attorney's arguments before the trial court (Petitioner's brief, at 27, App. 40-42).

and its articulate decision demonstrates a complete understanding of the facts of mobile home park living in Florida and of the concept of unconscionability as applied to mobile home park living in Florida.

Although Petitioner argues that the Florida Supreme Court's decision disregards the conditions for bringing class actions by associations as enunciated by this Court in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977) and *Warth v. Seldin*, 422 U.S. 490, 511 (1975), there is no conflict. *Hunt* and *Warth* state that an association has standing to bring suit on behalf of its members when: its members would have the right to sue in their own right; the interest it seeks to protect are germane to the organization's purpose; and neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit.

The facts of mobile home park living in Florida, as outlined under part 5 of this brief and in the Florida Supreme Court's decision in *Stewart v. Green*, together with the provisions of Chapter 723, Fla. Stat., show that mobile homeowners' associations in Florida clearly meet the "standing test" enunciated by this Court in *Hunt* and *Warth*.

8. No party has a vested substantive right to prevail in litigation.

Petitioner argues in its brief (p. 31-33) that the Florida Supreme Court's promulgation of Rule 1.222 violated Petitioner's due process rights because it deprived Petitioner of its asserted vested "right" to have the counterclaim filed by Respondent against Petitioner dismissed,

and the asserted subsumed right to obtain an award of attorney's fees and costs.

It is well established in Florida, as elsewhere, that statutes which do not alter contractual or vested rights but relate only to remedies or procedure are not within the general rule against retrospective operation and, absent a saving clause, all pending proceedings are affected. See, e.g.: *Rothermel v. Florida Parole and Probation Commission,* 441 So.2d 663 (Fla. lst DCA 1983); *Fogg v. Southeast Bank,* 473 So.2d 1352 (Fla. 4th DCA 1985); *McCord v. Smith,* 43 So.2d 704 (Fla. 1949), and authorities cited therein. Likewise, statutes withdrawing jurisdiction are immediately applicable, even as to pending suits, unless expressly reserved, even though such application may terminate pending litigation. *Griffith v. Florida Parole and Probation Commission,* 485 So.2d 818, 820 (Fla. 1986). The same principles apply to court rules.

The Florida Supreme Court declared § 723.079(1), Fla. Stat., unconstitutional because the Court asserted that the statute was procedural, and thus was within that Court's exclusive domain of promulgating rules of procedure. 541 So.2d at 1123. The Florida Supreme Court then replaced the statute with an identical, or virtually identical, rule of procedure. 541 So.2d at 1123-24. If the Florida Supreme Court was correct in its ruling that § 723.079(1), Fla. Stat., was procedural, then under the cases and authorities referred to in the preceding paragraph, the new rule – affecting matters of procedure – was properly made effective to the pending action. On the other hand, if § 723.079(1), Fla. Stat., were not procedural, then the Florida Legislature did not impinge upon the exclusive domain of the Florida Supreme Court, and the Florida

Supreme Court would have erroneously declared the statute unconstitutional. In either event, what the Florida Supreme Court did was to ratify, confirm, validate or cure the substance of what it asserted was a defective existing statute, and thus took away nothing from Petitioner.

Petitioner argues that making Rule 1.222 immediately effective deprived Petitioner of a substantive right, to-wit: the "right" to prevail on the litigation filed in trial court. However, there is no substantive or vested right to prevail in a lawsuit. This is clear, not only because of the inherent uncertainties of litigation, but also from the many cases which approve the application of new statutes addressing remedies, procedure, jurisdiction, or which eliminate penalties, to pending litigation even when the effect of such application is to alter the outcome of the litigation. *Tel Service Co. v. General Capital Corp.*, 227 So.2d 667 (Fla. 1969). This Court has also approved the application of new remedial, curative, or enabling statutes to pending litigation even though the end result of such application was to materially alter the outcome of the litigation. *McNair v. Knott*, 302 U.S. 369, 372-74 (1937). Thus, there can be no vested right to win a lawsuit.

Finally, even if the Florida Supreme Court had not made Rule 1.222 immediately effective, and even if the trial court had dismissed Respondent's counterpetition for lack of standing, Respondent could have reinstituted the same action in the same court. *Denver And Rio Grande Western Railroad Co. v. Brotherhood of Railroad Trainmen*, 387 U.S. 556, 563 (1967). Thus, Petitioner was deprived of nothing by the Florida Supreme Court's decision.

CONCLUSION

For the reasons stated, this Court should decline to issue a Writ of Certiorari to review the Judgment of the Florida Supreme Court.

Respectfully submitted,

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No. 89-350

In The

Supreme Court of the United States

October Term, 1989

LANTANA CASCADE OF PALM BEACH, LTD., A FLORIDA LIMITED PARTNERSHIP, BY AND THROUGH JAMES A. SMITH AS ONE OF ITS GENERAL PARTNERS,

Petitioner,

v.

LANCA HOMEOWNERS, INC., A FLORIDA CORPORATION NOT FOR PROFIT,

Respondent.

APPENDIX TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

THE SUPREME COURT OF THE UNITED STATES

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PERTINENT PROVISIONS FROM CHAPTER 723, FLORIDA STATUTES (1987), THE FLORIDA MOBILE HOME ACT

723.033 Unconscionable lot rental agreements. –

(1) If the court, as a matter of law, finds a mobile home lot rental agreement, or any provision of the rental agreement, to have been unconscionable at the time it was made, the court may:

(a) Refuse to enforce the rental agreement.

(b) Enforce the remainder of the rental agreement without the unconscionable provision.

(c) Limit the application of the unconscionable provision so as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the rental agreement, or any provision thereof, may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its meaning and purpose, the relationship of the parties, and other relevant factors to aid the court in making the determination.

723.037 Lot rental increases; reduction in services or utilities; change in rules and regulations; mediation or arbitration. –

(1) A park owner shall give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days prior to any increase in lot rental amount or reduction in services or utilities provided by the

park owner or change in rules and regulations . . . The homeowners' association shall have no standing to challenge the increase in lot rental amount, reduction in services or utilities, or change of rules and regulations unless a majority of the affected home owners agree, in writing, to such representation.

* * *

(3) A committee, not to exceed five in number, designated by a majority of the affected mobile home owners or by the board of directors of the homeowners' association, if applicable, shall meet at a mutually convenient time with the park owner within 30 days of the notice to discuss the reasons for the increase in lot rental amount, reduction in services or utilities, or change in rules and regulations.

* * *

723.041 Entrance fees; refunds; exit fees prohibited. –

(l)(a) Entrance fees on new mobile home placements shall be specifically set forth in the prospectus or offering circular. Any such fee shall be clearly identified in writing at the time that the rental agreement is signed or otherwise concluded.

(b) The failure on the part of a mobile home park owner or developer to disclose fully all fees, charges, or assessments shall prevent the park owner or operator from collecting such fees, charges, or assessments; and a refusal by the mobile home owner to pay any undisclosed charge shall not be used by the park owner or developer as a cause for eviction in any court of law.

* * *

723.054 Right of mobile home owners to peaceably assemble; right to communicate. –

(1) No provision contained in any bylaw, rental agreement, regulation, or rule pertaining to a mobile home park shall infringe upon the right of the mobile home owners to peaceably assemble in an open public meeting for any lawful purpose, at reasonable times and in a reasonable manner, in the common areas or recreational areas of the mobile home park.

(2) No provision contained in any bylaw, rental agreement, regulation, or rule pertaining to a mobile home park shall infringe upon the right of the mobile home owners or tenants to communicate or assemble among themselves, at reasonable times and in a reasonable manner, for the purpose of discussing any problems relative to the mobile home park. Such discussions may be held in the common areas or recreational areas of the park, including halls or centers, or in any resident's mobile home. In addition, the park owner or developer may not unreasonably restrict the use of any facility, including the use of utilities, when requested.

(3) No provision contained in any bylaw, rental agreement, regulation, or rule pertaining to a mobile home park shall prohibit any mobile home owner from canvassing mobile home owners for the purposes described in this subsection. For the purposes of this subsection, the term "canvassing" includes an oral or written request; the distribution, circulation, posting, or publication of a notice; or a general announcement requesting the payment of membership dues or other matters relevant to the membership of the park association, federation, or organization. Such canvassing shall be done at a reasonable time or times and in a reasonable manner. It is the intent of the Legislature,

through the enactment of this subsection, to prohibit any owner, developer, or manager of a mobile home park from prohibiting free communication among mobile home owners or tenants in the guise of regulations or rules restricting or limiting canvassing for association, federation, or organization dues or other association, federation, or organization matters.

723.055 Right of mobile home owner to invite public officers, candidates for public office, or representatives of a tenant organization. - No provision contained in any bylaw, rental agreement, regulation, or rule pertaining to a mobile home park shall infringe upon the right of a mobile home owner to invite public officers, candidates who have qualified for public office, or officers or representatives of a tenant organization to appear and speak upon matters of public interest in the common areas or recreational areas of the mobile home park at reasonable times and in a reasonable manner in an open public meeting. The mobile home park owner, however, may enforce rules and regulations relating to the time, place, and scheduling of such speakers, which rules and regulations will protect the interests of the majority of the home owners.

723.058 Restrictions on disposal of mobile homes.

(1) No mobile home park owner shall make or enforce any rule, regulation, or rental agreement provision which denies or abridges the right of any mobile home owner to sell his mobile home within the park; which prohibits the mobile home owner from placing a "for sale" sign on or in his mobile home (except that the size, placement, and character of all signs

are subject to properly promulgated and reasonable rules and regulations of the mobile home park); or which requires the mobile home owner to remove the mobile home from the park solely on the basis of the sale thereof.

(2) The park owner shall not exact a commission or fee with respect to the price realized by the seller unless the park owner has acted as agent for the mobile home owner in the sale pursuant to a written contract.

723.061 Eviction; grounds, proceedings.–

(1) A mobile home park owner may evict a mobile home owner or a mobile home only on one or more of the grounds provided in this section.

(a) Nonpayment of lot rental amount . . .

(b) Conviction of a violation of a federal or state law or local ordinance, which violation may be deemed detrimental to the health, safety, or welfare of other residents of the mobile home park.

(c) Violation of a park rule or regulation, the rental agreement, or this chapter . . .

(d) Change in the use of the land comprising the mobile home park, or the portion thereof from which mobile homes are to be evicted, from mobile home lot rentals to some other use . . .

(e) Failure of the purchaser of a mobile home situated in the mobile home park to be qualified as, and to obtain approval to become, a tenant, if such approval is required by a properly promulgated rule.

* * *

723.071 Sale of mobile home parks. –

(l)(a) If a mobile home park owner offers a mobile home park for sale, he shall notify the officers of the homeowners' association created pursuant to ss. 723.075-723.079 of his offer, stating the price and the terms and conditions of sale.

(b) The mobile home owners, by and through the association defined in s. 723.075, shall have the right to purchase the park, provided the home owners meet the price and terms and conditions of the mobile home park owner by executing a contract with the park owner within 45 days, unless agreed to otherwise, from the date of mailing of the notice and provided they have complied with ss. 723.075-723.079. If a contract between the park owner and the association is not executed within such 45-day period, then, unless the park owner thereafter elects to offer the park at a price lower than the price specified in his notice to the officers of the homeowners' association, he has no further obligations under this subsection, and his only obligation shall be as set forth in subsection (2).

* * *

723.073 Conveyance by the association. –

(1) In the event that an association acquires a mobile home park and intends to reconvey a portion of portions of the property acquired to members of the association, the association shall record copies of its articles and bylaws and any additional covenants, restrictions, or declarations of servitude affecting the property with the clerk of the circuit court prior to the conveyance of any portion of the property to an individual member of the association.

* * *

723.075 Homeowners' associations. –

(1) In order to exercise the rights provided in s. 723.071, the mobile home owners shall form an association in compliance with this section and ss. 723.077, 723.078, and 723.079, which shall be a corporation for profit or not for profit and of which not less than two-thirds of all of the mobile home owners within the park shall have consented, in writing, to become members or shareholders. Upon such consent by two-thirds of the mobile home owners, all consenting mobile home owners in the park and their successors shall become members of the association and shall be bound by the provisions of the articles of incorporation, the bylaws of the association, and such restrictions as may be properly promulgated pursuant thereto. The association shall have no member or shareholder who is not a bona fide owner of a mobile home located in the park. *Upon incorporation and service of the notice described in s. 723.076, the association shall become the representative of the mobile home owners in all matters relating to this chapter.* [emphasis added]

* * *

723.076 Incorporation; notification of park owner.

(1) Upon receipt of its certificate of incorporation, the homeowners' association shall notify the park owner in writing of such incorporation and shall advise the park owner of the names and addresses of the officers of the homeowners' association by personal delivery upon the park owner's representative as designated in the prospectus or by certified mail, return receipt requested.

(2) The homeowners' association shall file a notice of its right to purchase the mobile home park as set forth in s. 723.071. The notice shall contain the name of the association, the name of the park owner, and the address or legal description of the park. The notice shall be recorded with the clerk of the circuit court in the county where the mobile home park is located. Within 10 days of the recording, the homeowners' association shall provide a copy of the recorded notice to the park owner at the address provided by the park owner by certified mail, return receipt requested.

723.077 Articles of incorporation. – The articles of incorporation of a homeowners' association shall provide:

(1) That the association has the power to negotiate for, acquire, and operate the mobile home park on behalf of the mobile home owners.

(2) For the conversion of the mobile home park once acquired to a condominium, a cooperative form of ownership, or another type of ownership. Upon acquisition of the property, the association shall be the entity that creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business or, if the homeowners choose a different form of ownership, the entity that owns the record interest in the property and that is responsible for the operation of property.

723.078 Bylaws of homeowners' associations. – In order for a homeowners' association to exercise the rights provided in s. 723.071, the bylaws of the association shall provide for the following:

(1) The directors of the association and the operation shall be governed by the bylaws.

(2) The bylaws shall provide and, if they do not, shall be deemed to include, the following provisions . . .

* * *

723.081 Notice of application for change in zoning. – The mobile home park owner shall notify in writing each mobile home owner or, if a homeowners' association has been established, the directors of the association, of any application for a change in zoning of the park within 5 days after the filing for such zoning change with the zoning authority.

19 FLORIDA SUPPLEMENT SECOND

OFFNER, et al. v KELLER PARK INVESTORS, I, LTD.

Case No. CA84-3636
Sixth Judicial Circuit, Pasco County
August 20, 1986

APPEARANCES OF COUNSEL

John T. Allen, Jr. and Christopher P. Jayson, Law Office of John T. Allen, Jr.,P.A., for plaintiffs.
V. James Dickson for defendants.

OPINION OF THE COURT

LOWELL W. BRAY, JR., Circuit Judge.

THIS MATTER coming on to be heard on July 28, 29 and 31, 1986, on the complaint of various mobile home owner residents of Senate Manor mobile home park against Keller Park Investors, I, Ltd., the owner-operator of the park, said complaint seeking relief under Florida Statutes 723.004(4) and 723.033 and the court having sat as the trier of fact, having heard the testimony, reviewed the exhibits, and having considered the arguments of counsel, the Court finds as follows:

FINDINGS OF FACT:

1. On June 30, 1983, Keller Investment Properties, Inc., arranged for the purchase of Senate Manor Mobile Home Park, a 100% occupied park of approximately 395 units for the sum of $4,125,000.00.

2. The $1,000,000.00 down payment for the purchase of the property was raised by the syndication of a note in the amount of $1,375,000.00.

3. From the money raised in this initial syndication, $103,000.00 (2 ½% of the purchase price) was paid to Keller Investment Properties, Inc. as a "finder's fee".

4. Title to the property was taken in the name of Keller Park Investors, I, Ltd., in a limited partnership.

5. The sole owner of Keller Investment Properties, Inc. and the general partner of Keller Park Investors I, Ltd. is Brian R. Keller.

6. The partnership entered into a contract with Keller Investment Properties, Inc. to pay 5% of the gross receipts from the park to Keller Investment Properties, Inc. as a management fee.

7. The primary, if not sole, consideration for the 5% management fee was the presence, in the park, of two (husband and wife) part-time managers.

8. Through various financing arrangements, the park was mortgaged for 113% of its purchase price.

9. Because of the financing scheme, the interest expenses on the mobile home park in 1985 (a representative year) came to $124.79 per lot, per month.

10. The primary objective in purchasing the park was to sell the depreciation deductions from it as a tax shelter.

11. Because the finder's fee and the depreciation were based on the purchase price (the larger the price, the larger the benefits), there was no incentive to bargain to buy the park at the best (lowest) price possible.

12. During the period from July 1, 1983, until August, 1986, the partnership has received over

$1,000,000.00 in cash and tax benefits, over $1,000,000.00 in interest on financing has been paid, and the management company has received almost $200,000.00 in finder's fees and management fees.

13. At the present time, the partnership has a negative cash investment of $675,000.00 in the park.

14. At the time Senate Manor was purchased, the rents were $101.00 for an interior lot, $107.00 for a corner lot, and $112.00 for a lakefront lot.

15. As of January 1, 1984, the rents were raised to the following:

$133.00 for an interior lot

$139.00 for a corner lot

$144.00 for a lakefront lot.

16. On December 19, 1984, the plaintiffs herein filed his [sic] suit.

17. As of January 1, 1985, the rents were raised to the following:

$145.00 for an interior lot

$151.00 for a corner lot

$156.00 for a lakefront lot.

18. As of January 1, 1986, the rents were raised to the following:

$159.00 for an interior lot

$165.00 for a corner lot

$170.00 for a lakefront lot.

19. On May 8, 1985, this Court entered its order directing that the $32.00 increase for 1985 due on May 1 and each month thereafter be paid into the Registry of the Court, or into a specially created escrow account. The funds have been put into a special fund held at interest in the name of counsel for both parties.

20. The cash operating expenses for the mobile home park rose 10.42% in 1983, 18.82% in 1984, and fell 2.09% in 1985. The total amount of increase in cash operating expenses from 1983 to 1985 amounted to $6.44 per lot per month.

21. The rental increases were precipitated not by the market or by operating expenses, but by a combination of extraordinary interest expenses and a desire for larger profits.

22. During the ownership by the partnership, minimal improvements were made and services suffered at least some diminution in quality.

23. The mobile home owners have $8,500.00 invested in their mobile homes (most of which are double wide) and appurtenances including cement work, screen and aluminum rooms, storage sheds, etc.

24. There are few, if any, available parks to which the mobile home owners could move their homes, since most parks in the area are closed to mobile homes not purchased from the park owner and since most of the parks are filled.

25. The cost of moving and resetting the mobile homes and appurtenances would be approximately

$10,000.00 and the home would be of less value after the move.

26. Mobile homes in the park are currently selling at $4,000.00 to $15,000.00 less than their fair market value because of the current level of rents in the park.

27. The residents of the mobile home park are all adults and are almost all retired people living on retirement benefits, pensions, or social security.

28. A reasonable rental charge for the interior lots in each of the three years, based upon rents charged in comparable parks, would be $101.00 in 1984, $116.00 in 1985, and $125.00 in 1986. In each year, an additional charge of $6.00 for each corner lot and $11.00 for each lakefront lot would also be reasonable.

29. Increases based on the Consumer Price Index gains for the previous year would give a January 1, 1984 increase of 3.8%, a January 1, 1985 increase of 4%, and a January 1, 1986 increase of 3.8%.

30. During the trial the Court struck certain testimony of Defendant's witness Dale Hayes under authority of Walters v. State Road Department, 230 So.2d 878 (Fla. 1st DCA 1970). The Court's findings would still be the same even if such testimony were considered and weighed by the court as the trier of fact.

APPLICATION OF LAW TO FACTS:

A. The facts set out above establish procedural unconscionability because of the absence of any meaningful choice on the part of the mobile home owners, together with terms and benefits unreasonably favorable to the

partnership and the management company. Kohl v. Bay Colony Club Condominium, 398 So.2d 865 (Fla. 4th DCA 1981), pet. for review denied 408 So.2d 1094 (Fla. 1981), Steinhardt v. Rudolph, 422 So.2d 884 (Fla. 3d DCA 1982). The mobile home owners find themselves bound by a bargain they never made. They have no voice in the matter of rents. The mobile homes, if not the owners themselves, are captives of the partnership and the management company. The owners have three choices: 1) pay the rent no matter how high it is set, 2) sell their mobile homes at less than their actual value, or 3) move the mobile homes at possibly a greater loss than from a sale. Through an established pattern of self-dealing which the management company is following the value of the mobile home owner's assets is being siphoned off and confiscated by the partnership and the management company.

B. The facts set out above establish substantive unconscionability because of the outrageous degree of unfairness, Kohl, supra, Steinhardt, supra.

(a) The increases are not based on a legitimate financial basis for calculating rental values, but are arbitrary and capricious in that they are driven by the consequences of the defendant's financing scheme. Moreover, the increases are confiscatory in nature reducing the value of the mobile home owners property Fredricks v. Hofmann, 45 Fla. Supp. 44, (Circuit Court, Sarasota County, Fla. 1976). Appel v. Scott, 479 So.2d 800 (Fla. 2d DCA 1985).

(b) The increased rental is significantly higher than the fair market rental value of the lots (3.17% in 1984, 25%

in 1985 and 27.2% in 1986). State v. DeAnza, 416 So.2d 1173 (Fla. 5th DCA 1982), Appel, supra.

(c) The rent grossly exceeds that paid for lots of equal value in comparable parks. (see Plaintiff's Exhibit No. 44 in evidence.) DeAnza, supra, Appel, supra, Ashling Enterprises v. Browning, 487 So.2d 56 (Fla. 3d DCA 1986), Garrett v. Janiewski, 480 So.2d 1324 (Fla. 4th DCA 1985).

IT IS THEREFORE, ORDERED AND ADJUDGED:

I. The Court enters judgment for the Plaintiffs and against Defendant because of the rental increases of 1984, 1985, and 1986 were unconscionable.

II. To avoid any unconscionable result, the Court sets the rents for each of the years in question as follows:

	Interior Lot	Corner Lot	Lakefront Lot
1984	$101.00	$107.00	$112.00
1985	$116.00	$122.00	$127.00
1986	$125.00	$131.00	$136.00

III. The Defendant is enjoined from levying, charging, or collecting any rents in excess of these rates from January 1, 1984 through December 31, 1986, and is ordered to refund to Plaintiffs such rents as have been collected in excess of these rental charges.

IV. Counsel for both parties are directed to pay over to the defendant from the specially created fund, any such sums as it may be entitled to under this Order and

to remit the balance of the monies which are held under the Court's Order of May 8, 1985, to the Plaintiffs.

V. Should any Plaintiff be entitled to a credit in excess of the amount being held in the specially created fund, he shall be entitled to deduct from each of his twenty-four payments an amount equal to 1/24th of the credit balance to which he is entitled after the Clerk's refund to him. Should any Plaintiff cease to be a tenant before the expiration of the twenty-four months he may, at his option, assign the right to reduce payments to his successor tenant or receive a money judgment against the Defendant for any unreclaimed excess rent to which he is entitled. The Court retains jurisdiction to enter such judgments as may be necessary or proper under this judgment.

VI. The Plaintiff is entitled to recover a reasonable attorney's fee and costs in this action, and the court retains jurisdiction to determine the amount of such fees and costs.

VII. Any and all other prayers for relief are denied.

DONE AND ORDERED in Chambers, at New Port Richey, Pasco County, Florida, this 20th day of August, 1986.